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Attorneys for Plaintiffs Carson Smith,  
and SMITHONLY Corporation

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

CARSON SMITH, an individual, and  
SMITHONLY CORPORATION,

Plaintiffs,

v.

DENNIS HEALY, HOLLY HEALY, as  
individuals, SKY CORPORATION, LTD., an  
unincorporated business entity, RKD  
PREMIUM PRODUCTS, AN OREGON  
CORPORATION, KENNETH TANG, an  
individual, and K'S PREMIUM PRODUCTS  
COMPANY, an unincorporated business  
entity,

Defendants.

Civil No.: 10-CV-72-BR

**PLAINTIFF'S SECOND MOTION TO  
AMEND COMPLAINT**

FRCP 15(a)(2)

**ORAL ARGUMENT REQUESTED**

**CERTIFICATE OF CONFERRAL (SLR 7.1)**

Pursuant to LR 7.1(a), I hereby certify that the parties made a good faith effort through  
telephone conversations to resolve the dispute and have been unable to do so.

**1 – PLAINTIFFS' SECOND MOTION TO AMEND COMPLAINT**

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### **MOTION**

Plaintiffs, by and through their undersigned attorney, move this Court for leave to file a Second Amended Complaint pursuant to FRCP 15(a)(2). The proposed draft Second Amended Complaint is attached as Exhibit 1 to this motion, and the attached Declaration of Counsel is offered in support of this motion, which alleges facts sufficient for the court to find that justice so requires that leave to amend be granted. If leave is not granted, then Plaintiffs' may suffer undue harm to their claims and a substantial injustice will occur.

The following is a list of the proposed amendments to the complaint:

1. Because the court has ruled against Plaintiffs on all of Plaintiffs' existing claims pursuant to Defendants' Motion for Summary Judgment, Plaintiffs have dropped all existing claims from this proposed amended complaint. Thus, only the first 5 introductory paragraphs are similar to those in the first complaint but have also been altered in light of the new claims proposed in the amended complaint.
2. This court has denied Plaintiffs' previous motion to amend its complaint to add a conversion claim on the grounds that such amendment would be futile due to the court's findings that federal patent law preempts and prohibits any attempt by Plaintiffs to allege a claim that Defendants' have converted Plaintiffs' intellectual property by selling Plaintiffs' copies of Plaintiffs' invention without Plaintiffs' permission. Thus, Plaintiffs propose this attached amended complaint alleging three counts of Defendants' conversion of Plaintiffs' personal, not intellectual property.

### **2 – PLAINTIFFS' MOTION TO AMEND COMPLAINT**

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**WHEREFORE**, the plaintiffs respectfully requests that this Court:

1. Order that Plaintiff's be allowed to file the proposed Second Amended Complaint.
2. Grant any other relief this Court deems just and proper.

\_\_\_\_\_ **DATED** this 12<sup>th</sup> day in December, 2010.

/s/Cary Novotny

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\_\_\_\_\_  
Of Attorneys for Plaintiffs

**3 – PLAINTIFFS' MOTION TO AMEND COMPLAINT**

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on December 13, 2010, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Michael M Ratoza,  
Attorney for Defendants DENNIS HEALY, HOLLY HEALY, SKY CORPORATION, LTD.,  
and RKD PREMIUM PRODUCTS  
Bullivant Houser Bailey PC  
Of Attorneys for Defendants  
888 SW 5th Ave Ste 300  
Portland, OR 97204

DATED this 13th day of December, 2010.

/s/Cary Novotny  
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